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|--|---------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/594,304   | 06/26/2007    | Dirk Herinckx        | 022862-1087-00      | 1930             |
| 34044  | 7590          | 06/16/2010           | EXAMINER            |                  |
| MICHAEL BEST & FRIEDRICH LLP<br>100 EAST WISCONSIN AVENUE<br>MILWAUKEE, WI 53202 |               |                      | GRAHAM, GARY K      |                  |
| ART UNIT   | PAPER NUMBER  |                      |                     |                  |
|  | 3727          |                      |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/594,304 | <b>Applicant(s)</b><br>HERINCKX ET AL. |
|                              | <b>Examiner</b><br>Gary K. Graham    | <b>Art Unit</b><br>3727                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,6-10,12 and 17 is/are rejected.
- 7) Claim(s) 5,11 and 13-16 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement (Form PTO-1449)  
Paper No(s)/Mail Date 2060926 and 20090223
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-10, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Krohm (US patent 2,782,443).

Krohm discloses the invention as is claimed. Krohm discloses a wiper blade (1) comprising a supporting element (fig.3) supporting a wiper strip (4). The supporting element includes two longitudinal rails (10) fixed to one another at their ends by bridges (11). Caps (9,18) cover the ends of the rails. The cap (9) has several parts including a basic body (19) and at least one movable part (21) with a compression body (22). The basic body establishes a connection to the longitudinal rails as it has beveled ramps (26) that can grip under the bridge (11). The movable part fixes the wiper strip as it locks the rails, which are fixed to the wiper strip, to the pressure device (2).

With respect to claim 1, the part (21) of Krohm is considered movable, at least as far as defined, since it can be moved into and out of position with respect to the rails and pressure device of the wiper blade.

With respect to claim 4, as the compression body (22) is on the part (21), which is on the basic body, the compression body is considered as “arranged on” the basic body as well.

With respect to claim 7, note that component (20) can be considered as the movable part.

Such is clearly movable with respect to the rails, wiper strip and pressure device when it is attached or detached from the wiper blade. Such component includes the ramps (26) which grip under the bridge (11).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 6, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid et al (WO 02/04265) in view of De Block et al (US patent 6,944,905).

Schmid discloses the invention substantially as is claimed. Schmid discloses a wiper blade (1) comprising a supporting element (figs.8-10) supporting a wiper strip (2). The supporting element includes two longitudinal rails (4) fixed to one another at their ends by bridges (37). A cap (33) covers one end of the rails. The cap (33) has several parts including a basic body and at least one movable part (34) with a compression body (35). The basic body establishes a connection to the longitudinal rails (See fig.9). The movable part fixes the wiper strip as it engages the spoiler (12) of the strip and locks such to the rails, which are fixed to the wiper strip.

The patent to Schmid discloses all of the above recited subject matter with the exception of there being a cap at each end of the blade.

The patent to De Block discloses a wiper blade (10, fig.1) that employs a pair of caps (38), one at each end of the blade, to secure the strips (30) with the wiper strip (14).

It would have been obvious to one of skill in the art to provide the wiper blade of Schmid with a cap at each end of the blade, as clearly suggested by De Block, to improve the aerodynamic shape of the wiper blade. Such would enable the very end of the blade to have the spoiler shape. It is well established to employ caps at each end of wiper blades.

With respect to claim 1, the part (34) of Schmid is considered movable since it flexes to enable engagement of the tab (35) in the recess (36).

With respect to claim 4, as the compression body (35) is on the part (34), which is on the basic body, the compression body is considered as “arranged on” the basic body as well.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 7,581,280 in view of De Block et al (US patent 6,944,905).

Claim 8 of the '280 patent discloses the invention substantially as is claimed, with the exception of there being a cap at each end of the blade.

The patent to De Block discloses all of the above recited subject matter.

It would have been obvious to one of skill in the art to provide the wiper blade of claim 8 of the '280 patent with a cap at each end of the blade, as clearly suggested by De Block, to improve the aerodynamic shape of the wiper blade. Such would enable the very end of the blade to have the spoiler shape. It is well established to employ caps at each end of wiper blades.

#### ***Allowable Subject Matter***

Claims 5, 11 and 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/  
Primary Examiner, Art Unit 3727

GKG  
14 June 2010